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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

-

WRIT PETITION NO.22581 of 2004

Between:

1 Moparthi Koteswara Rao, S/o. Krishnaiah,
R/o. Takkellapadu (V), Pedda Kakani Mandal, Guntur District.
2 Chigurupathi Nagaiah, S/o. Sivaiah,
R/o. Takkellapadu (V), Pedda Kakani Mandal, Guntur District.
3 Chigurupathi Seshaiah, S/o. Sivaiah,
R/o. Takkellapadu (V), Pedda Kakani Mandal, Guntur District.
4 Yenduri Sambasiva Rao, S/o. Ramaiah,
R/o. Takkellapadu (V), Pedda Kakani Mandal, Guntur District.
5 Pamidipathi Venkayamma, D/o. K. Subba Rao,
R/o. Takkellapadu (V), Pedda Kakani Mandal, Guntur District.
6 Shaik Hassan Saheb, S/o. Nabi Saheb,
R/o. Takkellapadu (V), Pedda Kakani Mandal, Guntur District.
7 Shaik Adam Sahab, S/o. SK. Hussain Saheb,
R/o. Takkellapadu (V), Pedda Kakani Mandal, Guntur District.

..... PETITIONERS

AND

1 The District Collector-Guntur, Office at Guntur-Town and District.
2 The Revenue Divisional Officer-Guntur, Office at Guntur-Town

and District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of "Writ of Mandamus" declaring the action of the first respondent in issuing 4(1) notification vide proceeding NO. Rc. NO. 2252/2004-G1 dated 18-10-2004, as illegal arbitrary, high handed and violation of Articles 14, 19, 21 and 25 of the constitution of India and also violative of Appendix-IV of the Land Acquisition Act - 1894, and also violative of Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institution and Endowments Act – 1987.

Counsel for the Petitioners: MR.UNNAM.MURALIDHAR RAO

Counsel for the Respondents: GP FOR REVENUE (LA)

The Court, at the admission stage, made the following :

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THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 22581 of 2004

O r d e r:

The petitioners, by this writ petition, seek writ of Mandamus to declare the Notification issued by the first respondent-District Collector, Guntur under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') vide proceedings No.2252/2004-G1, dated 18-10-2004, proposing to acquire the land of Sri Seetha Rama Swamy vari Temple, Takkellapadu village, Peddakakani Mandal, Guntur District (for short 'the Temple') in an extent of Ac.10-77 cents comprising Ac. 5-47

cents in Sy. No. 22-2 cents and Ac. 5-30 cents in Sy. No. 27-1 of Takkellapadu village, as illegal and arbitrary, and violative of Appendix-IV of the Act, and also Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Endowments Act').

The petitioners claim to be landless poor and statutory tenants of the Temple in respect of the property under acquisition since the time of their forefathers. According to them, the impugned notification proposing to acquire the land in question for allotting house sites to the weaker sections has taken away the benefits accrued to them by virtue of Section 82 of the Act. They state that they being statutory tenants, have exercised option to purchase the said land as contemplated under Sub-section (2) of Section 82 of the Endowments Act, and in pursuance thereof the Assistant Commissioner of Endowments, Guntur conducted enquiry and by his proceedings Rc.No.A5/6112/2003, dated 22-06-2003 and 22-08-2003, declared some of them as landless poor and the cases of others are under consideration, and in fact they were all declared as landless poor by the Mandal Revenue Officer, Peddakakani Mandal and Village Secretary of Takkellapadu village. They state that the impugned notification is illegal, inasmuch as the District Welfare Officer has not decided any congestion in Takkellapadu village to acquire the land, as required by the provisions of Appendix-IV of the Act, and in fact no persons in the village require house sites. They also state that inasmuch as the apex Court in **State of A.P. and others v. Nallamilli Rami Reddy and others** held that the tenants under the Endowments Act form a different class, and they as statutory tenants, are entitled to be extended the benefits of Section 82 of the Endowments Act. It is stated that the impugned notification has been issued at the instance of local rival political group without there being any necessity of acquisition, to deprive the petitioners of their livelihood, which is illegal.

Heard the learned counsel for the petitioners and the learned Government Pleader for Land Acquisition.

The learned counsel for the petitioners submitted that the petitioners who are tenants of Sri Seetha Rama Swamy vari Temple were declared as landless poor persons, and while the representations made by them to the authorities in the Endowments Department, exercising their option to purchase the land, which is under their tenancy, are pending consideration, the first respondent issued the

impugned Notification under Section 4(1) of the Act, seeking to acquire the lands belonging to the Temple, for the purpose of providing house sites to weaker sections, which is illegal and arbitrary. He submits that Section 82 of the Endowments Act being a beneficial provision, intended to benefit the statutory tenants, and the petitioners being tenants of the Temple, the land which is in their possession under the Tenancy, cannot be acquired under the provisions of the Act, and at any rate, the lands cannot be acquired without ascertaining the genuineness of congestion existing in the village where harijan colony is situated, by the District Welfare Officer. Therefore, the impugned notification, seeking to acquire the land belonging to the Temple, which is under their tenancy, at the instance of rival political party, cannot be sustained and is required to be quashed and set aside. In support of his contention that a land belonging to a weaker section cannot be acquired for the purpose of providing house sites to weaker sections of the society, the learned counsel placed reliance on the judgment of this Court in **Danavath Bichya v. District Collector, Nalgonda**.

The learned Government Pleader for Land Acquisition submitted that the issue involved in this writ petition is squarely covered by the judgement of this Court in **Kona Venkanna v. District Collector, Kakinada**. He, submitted that except the lands belonging to the Temple, there are no other lands available, which are suitable for providing house sites to weaker sections, and therefore, the land belonging to the Temple, which is in the possession of the petitioners as tenants thereof, was sought to be acquired, and accordingly Notification under Section 4(1) of the Act was issued for its acquisition, and no exception can be taken thereto. The petitioners being tenants of the Temple would be eligible for their share of compensation that may be paid to the Temple for acquisition of their lands.

The petitioners, admittedly, are not the owners of the land in question. The land in question admittedly belongs to the Temple. The petitioners are merely cultivating tenants of the land in question, having taken the same on lease from the Temple. The right of the petitioners over the land in question, if any, is to the extent of their tenancy rights, which they got under the tenancy agreement. The tenancy in respect of the land, if any, subsists only between the petitioners and the Temple. It is not known whether the Temple, which is the owner of the land, which is under cultivation of the petitioners, has any objection to the acquisition. The tenancy between the petitioners and the Temple, in respect of the land, admittedly has no

statutory force, and tenancy having no statutory force, cannot come in the way of the land acquisition proceedings, which are initiated under the Act, which is a special enactment, enacted for acquisition of land needed for public purposes. Though the petitioners contend that they being tenants of the Temple, are entitled to be extended the benefits of Section 82 of the Endowments Act, it is required to notice that the apex Court in **State of A.P. and Others vs. Nallamilli Rami Reddy and Others** had held that the tenancy laws would not be applicable in relation to lands belonging to a Charitable or an Endowment Institution. Therefore, the petitioners being merely tenants of the Temple, cannot seek to enforce their tenancy over the land, which is under their cultivation, and which admittedly belongs to the Temple, which is a Charitable Institution, and more so when it is sought to be acquired by the first respondent, for a public purpose, namely providing house sites to weaker sections of the society.

Even assuming the petitioners were declared to be landless poor persons, the fact that remains is they are not the owners of the land, and they are in possession of the land in terms of a tenancy agreement, entered into by them with the Temple. The petitioners, admittedly, are persons, not belonging to weaker sections of the society. The public policy demands individual interest should pave way for majority interest. It is not the case of the petitioners that even though they belong to weaker sections of the society, and despite availability of land belonging to non-weaker sections of the society, the respondents in order to provide houses to weaker sections of the society, have chosen to acquire the land belonging to the Temple, which is in their possession by virtue of a tenancy agreement. Further, it is not their case that they are the owners of the land. Admittedly, they are tenants of the Temple, and except tenancy rights over the land in question under the tenancy agreement, they cannot seek to exercise more rights than what the owner of the land has. In that view of the matter, reliance placed by the learned counsel for the petitioners on the judgement of this Court in **Danavath Bichya v. District Collector, Nalgonda**, has no application to the facts of the present case, for in the said case, the land of a tribal was sought to be acquired for providing houses to weaker sections of the society. This Court considering the fact that tribals are more weaker among the weaker sections of the society, held that public purpose cannot be inferred when the land of weaker section is subjected to acquisition.

Though the learned counsel for the petitioners contends that acquisition of land cannot be undertaken unless the District Welfare Officer, looks into the congestion, if any, existing in the village where harijan colony is situated as provided for in the Rules and Instructions appended to the Act as Appendix-IV, it is required to notice that they are merely procedural instructions, and they cannot prevail over the provisions of the Act, and there can be no doubt that the respondents would follow the procedures contemplated under the Act for acquisition. Be that as it may, it is submitted by the learned Government Pleader for Revenue and admitted to by the learned counsel for the petitioners that the respondents have not dispensed with the enquiry under Section 5-A of the Act, and they are conducting the enquiry. When such is the case, the petitioners being in possession of the land and persons interested therein, may well put forth their grievance before the authorities concerned in the enquiry that may be conducted by the respondents under Section 5-A of the Act, bringing to their notice that they are landless poor persons, and that the land in their possession and cultivation, which belongs to the Temple, may be exempted from acquisition, but certainly, they not being the owners of the land in question, and being merely tenants of the Temple, cannot seek to question the acquisition proceedings on technicalities.

The petitioners admittedly are tenants of Sri Seetha Rama Swamy Temple of Takkellapadu village, and even if they are treated to be a different class, namely “tenants of the Temple lands” they cannot claim to have better rights than what the Temple, which is the owner of the land in question has. At best, the petitioners being in possession of the land in question belonging to the Temple as tenants, and persons interested in the land, can claim their share of compensation, which may be awarded by the Land Acquisition Officer for acquisition thereof. This aspect of the matter was considered by a learned single Judge of this Court in **B. Jagannayakulu vs. District Collector**, wherein he held thus:

“A tenant cannot have more rights than the owner. When the question of acquisition of land comes, if the owner cannot defeat the provisions of Land Acquisition Act can a tenant defeat such provisions? Under Section 11 of the Tenancy Act change of ownership in lands which are under tenants is possible. So, by issuing a notification under Section 4 of the Land Acquisition Act, the State has expressed its intention to take the lands into their own ownership. Under the Land Acquisition Act, State can become the owner of any property provided the property is taken for a public purpose and after following the procedure laid down by the Land Acquisition Act. Change of ownership is not barred under the A.P. Tenancy Act, therefore, State can become owner of the lands which are owned by landlords whether they are temples or private individuals. Once the land is taken in the ownership of the State, the A.P. Tenancy Act, 1956 becomes inoperative by virtue of Section 18 of the same Act. Section 18 of the Tenancy Act lays down that, nothing in the Tenancy Act shall apply to the lands owned by the State Government or the Central Government. Acquisition, per se, is not barred under the Tenancy Act. Change of ownership, is also not barred under the Tenancy Act. There cannot be

any bar to the State Government to take the lands into its possession under the provisions of Land Acquisition Act which are in the possession of tenants at a particular point of time."

The petitioners being tenants of the Temple and persons interested in the land belonging to the Temple by reason of their cultivation of the said land, can as well seek their share of compensation that may be awarded by the Land Acquisition Officer in lieu of acquisition thereof, but they certainly cannot question the acquisition proceedings on mere technicalities, as stated above.

Since enquiry under Section 5-A of the Act is yet to be conducted by the respondents, as and when it is conducted by the respondents, it is always open to the petitioners, to participate in the enquiry and put forth their grievance, if any.

With the observation as above, the writ petition is disposed of. No costs.

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N.V. RAMANA, J.

Date: 27th December, 2004.

KSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The District Collector-Guntur, Office at Guntur-Town and District.
2 The Revenue Divisional Officer-Guntur, Office at Guntur-Town

and District.

3 Two CCS to GP for Revenue, High Court of AP, Hyderabad (OUT)

4 Two CD copies.